

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, N.W.
Suite 3000
Washington, D.C. 20530

Plaintiff,

v.

AKTIEBOLAGET VOLVO,
S-405 08 Goteborg
Sweden

VOLVO TRUCKS NORTH AMERICA, INC.,
7900 National Service Road
Greensboro, North Carolina 27409

RENAULT S.A.,
13-15 Quai Le Gallo
Boulogne-Billancourt 92100
France

RENAULT V.I. S.A.,
129 rue Servient
“La Part-Dieu”
69003 Lyon, France

and

MACK TRUCKS, INC.
2100 Mack Boulevard
Allentown, Pennsylvania 18105

Defendants.

Civil No.: 1:00CV03006

Filed: 12/18/00

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Purchaser" means the entity to whom defendants divest either the VTNA LCOE Truck Business or the Mack LCOE Truck Business.

B. "AB Volvo" means defendant Aktiebolaget Volvo, a Swedish corporation with its headquarters in Gotenborg, Sweden, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "VTNA" means defendant Volvo Trucks North America, Inc., a Delaware corporation and a wholly owned subsidiary of AB Volvo with its headquarters in Greensboro, North Carolina, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Renault" means defendant Renault S.A., a French corporation with its headquarters in Boulogne-Billancourt, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Renault V.I." means defendant Renault V.I. S.A., a French corporation and a

wholly owned subsidiary of Renault with its headquarters in Lyon, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Mack” means defendant Mack Trucks, Inc., a Pennsylvania corporation and a wholly owned subsidiary of Renault V.I. with its headquarters in Allentown, Pennsylvania, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “LCOE Truck” means a class 8 low cab over engine straight truck with a cab placed over or in front of the engine and the capability to accept an attached vocational body.

H. “VTNA LCOE Truck Business” means VTNA’s line of LCOE Trucks (which consists of the WX and WXLL) including:

- (1) all tangible assets that comprise the VTNA LCOE Truck Business, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, materials, supplies, and other tangible property and all other assets used exclusively in connection with the VTNA LCOE Truck Business; all components, parts, and designs used in LCOE Trucks comprising the VTNA LCOE Truck Business; all licenses, permits and authorizations issued by any governmental organization relating to the VTNA LCOE Truck Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the VTNA LCOE Truck Business, including supply agreements; all lists, contracts,

accounts, and credit records of customers; all repair, performance, and VTNA LCOE Truck Business records and all other records relating to the VTNA LCOE Truck Business. The VTNA Truck Business does not include the sale of the VTNA New River Valley, Virginia, plant; and

- (2) any and all intangible assets used in the development, production, servicing and sale of the VTNA LCOE Truck Business, including, but not limited to:
- (a) the Xpeditor, WX, and WXLL brand names and all other intellectual property rights used exclusively in connection with the VTNA LCOE Truck Business; (b) with respect to all other intellectual property rights used in connection with both the VTNA LCOE Truck Business and other nondivested AB Volvo assets (other than intellectual property regarding use of the word “Volvo”), a transferable, license, exclusive in the VTNA LCOE Truck Business field of use; (c) all existing licenses and sublicenses relating exclusively to the VTNA LCOE Truck Business; (d) a transferable, sublicense, exclusive in the VTNA LCOE Truck Business field of use, to all other existing licenses and sublicenses relating to the VTNA LCOE Truck Business; and (e) all research, market evaluations or information relating to plans for, improvements or updates to, or product line extensions of the WX or WXLL. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, copyrights, technical information, trademarks, trade names, service marks, service names, computer software and related documentation, know-how, trade secrets,

drawings, blueprints, designs, design protocols, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the VTNA LCOE Truck Business including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

- I. “Mack LCOE Truck Business” means Mack’s line of LCOE Trucks (which includes the MR and LE) including:
- (1) all tangible assets that comprise the Mack LCOE Truck Business, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, materials, supplies, and other tangible property and all other assets used exclusively in connection with the Mack LCOE Truck Business; all components, parts, and designs used in LCOE Trucks comprising the Mack LCOE Truck Business; all licenses, permits and authorizations issued by any governmental organization relating to the Mack LCOE Truck Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Mack LCOE Truck Business, including supply agreements; all lists, contracts, accounts, and credit records of customers; all repair, performance, and Mack LCOE Truck Business

records and all other records relating to the Mack LCOE Truck Business.

The Mack LCOE Truck Business does not include the sale of the Mack Macungie, Pennsylvania, plant; and

- (2) any and all intangible assets used in the development, production, servicing and sale of the Mack LCOE Truck Business, including, but not limited to:
 - (a) the MR and LE brand names and all other intellectual property rights used exclusively in connection with the Mack LCOE Truck Business; (b) with respect to all other intellectual property rights used in connection with both the Mack LCOE Truck Business and other nondivested Renault assets (other than intellectual property regarding use of the word “Mack” or the word “Renault”), a transferable, license, exclusive in the Mack LCOE Truck Business field of use; (c) all existing licenses and sublicenses relating exclusively to the Mack LCOE Truck Business; (d) a transferable, sublicense, exclusive in the Mack LCOE Truck Business field of use, to all other existing licenses and sublicenses relating to the Mack LCOE Truck Business; and (e) all research, market evaluations or information relating to plans for, improvements or updates to, or product line extensions of the MR or LE. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, technical information, copyrights, trademarks, trade names, service marks, service names, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for parts and devices, safety

procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Mack LCOE Truck Business including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the VTNA LCOE Truck Business or, pursuant to the decision of a trustee, the Mack LCOE Truck Business, for the purpose of assuring the establishment of one or more viable competitors in the LCOE Truck industry capable of competing effectively to supply LCOE Trucks in North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from AB Volvo's acquisition of Renault V.I.. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the VTNA and Mack LCOE Truck Businesses operate as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of AB Volvo's acquisition of Renault V.I., and that competition is maintained during the pendency of the ordered divestitures.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed

Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the VTNA and Mack LCOE Truck Businesses as competitively independent, economically viable parts of ongoing competitive businesses, with management, research, design, development, promotions, marketing, sales and operations of such assets held entirely separate, distinct and apart from those of the defendants' other operations. Except as provided in this paragraph, AB Volvo shall not coordinate the research and development, promotions, production, marketing or terms of sale of any products produced by or sold by or through the VTNA LCOE Truck Business with those

produced or sold by or through the Mack LCOE Truck Business. Notwithstanding the foregoing provisions, AB Volvo is not prohibited from continuing the historical, regular course of business, system-wide production and sales of VTNA and Mack LCOE Trucks, provided that defendants continue to support and maintain the VTNA and Mack LCOE Truck Businesses as independent, ongoing, economically viable and active competitors in the LCOE Truck industry as required by this Hold Separate Stipulation and Order (including efforts to maintain and increase the sales revenue of the VTNA and Mack LCOE Truck Businesses required under Section V.(C)). Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the VTNA and Mack LCOE Truck Businesses will be maintained and operated as an independent, ongoing, economically viable and active competitors in the LCOE Truck industry; (2) management of the VTNA and Mack LCOE Truck Businesses (designated in Section V.(J)) will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning research, development, marketing, production, distribution or sales of products by or under any of the VTNA and Mack LCOE Truck Businesses will be kept separate and apart from defendant's other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the research, development, sales, and revenues of the products produced by or sold under the VTNA and Mack LCOE Truck Businesses, and shall maintain at 2000 levels or previously approved levels for 2001, whichever are higher, all research, development, product improvement, promotional,

advertising, sales, technical assistance, marketing and merchandising support for the VTNA and Mack LCOE Truck Businesses.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the VTNA and Mack LCOE Businesses as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and V(B).

E. Defendants shall take all steps necessary to ensure that all the assets of the VTNA and Mack LCOE Truck Businesses are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal product improvement and upgrade and repair and maintenance schedules for those assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the VTNA or Mack LCOE Truck Businesses.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the VTNA and Mack LCOE Truck Businesses.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the VTNA or Mack LCOE Truck Businesses.

I. Defendants' employees with primary responsibility for the research, design, development, promotion, distribution, sale, and operation of the VTNA and Mack LCOE Truck Businesses shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy.

Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Prior to consummation of their transaction, defendants shall appoint Stanley C. Ellspermann to oversee the VTNA LCOE Truck Business and Denis Leblond to oversee the Mack LCOE Truck Business, and to be responsible for defendants' compliance with this section. Stanley C. Ellspermann shall have complete managerial responsibility for the VTNA LCOE Truck Business, and Denis Leblond shall have complete managerial responsibility for the Mack LCOE Truck Business, subject to the provisions of this Final Judgment. In the event either person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to monitor and complete the divestiture pursuant to the Final Judgment to a purchaser acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order

of the Court.

Dated: December 18, 2000

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
Frederick H. Parmenter, Esq.
Virginia Bar No.: 18184
United States Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW
Suite 3000
Washington, DC 20530
(202) 307-0620

Respectfully submitted,

FOR DEFENDANTS
AKTIEBOLAGET VOLVO and
VOLVO TRUCKS
NORTH AMERICA, INC.

_____/s/_____
Kevin Arquit, Esq.
Clifford Chance Rogers & Wells LLP
200 Park Avenue
New York, New York 10166-0153
(212) 878-8375

FOR DEFENDANTS
RENAULT S.A., RENAULT S.A. V.I.
and MACK TRUCKS, INC.

_____/s/_____
Richard J. Urowsky, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004
(212) 558-4812

ORDER

IT IS SO ORDERED by the Court, this 19th day of December, 2000.

_____/s/_____
United States District Judge